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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUBCOMMITTEE

Thirty-fourth session

SUMMARY RECORD OF THE 583rd MEETING

Held at the Vienna International Centre, Vienna,
on Thursday, 30 March 1995, at 10 a.m.

Chairman: Mr. MIKULKA (Czech Republic)

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Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries

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The meeting was called to order at 10.20 a.m.

PARTICIPATION BY NON-MEMBER STATES

1. **The CHAIRMAN** said that Panama had applied to participate in the work of the Subcommittee as an observer. As it was the prerogative of the Committee on the Peaceful Uses of Outer Space to grant observer status, he suggested that the Subcommittee should not adopt a formal decision on the matter but that, if there was no objection, the representative of Panama should attend the Subcommittee's formal meetings and, if it wished to make a statement, seek permission from the Chair.

2. *It was so decided.*

GENERAL EXCHANGE OF VIEWS (*continued*)

3. **Mr. VELAZCO SAN JOSÉ** (Cuba) said that recent research had demonstrated the need for urgent action to slow down the alarming impoverishment of the Earth. There was an increasing awareness that space technology could help to solve many of the problems and bring benefits to many countries, in particular the developing countries. It was therefore a cause for concern that the continuing arms race was using up valuable resources that could be put to better use.

4. With respect to the possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, he said that, if a consensus was reached, such a revision should be directed towards better prevention and the elimination of possible catastrophes, with clear safety criteria in the event of uncontrolled re-entry of on-board nuclear power sources.

5. With respect to agenda item 4, on the definition and delimitation of outer space and on the geostationary orbit, his delegation reiterated the need for a definition and delimitation of outer space in conformity with the Outer Space Treaty, while recognizing the role of ITU. In the absence of a limit between airspace and outer space it was difficult to establish the scope of agreements on outer space. Fixing an upper limit for airspace would strengthen the sovereignty of States and limit the possibility of controversy.

6. With respect to agenda item 5, on outer space benefits, Cuba considered that discussions should be carried out within a legal framework that guaranteed access by all countries in particular the developing countries, to all the benefits of the exploration and use of outer space. The right of States with limited space capabilities to take a full part in the exploration and utilization of outer space when they had the necessary resources to do so, should also be protected. That objective could be achieved if the principle of international cooperation between States was applied.

7. **Mr. KOPEL** (Czech Republic), referring to the question of early review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, said that further work in the Legal Subcommittee was to await progress on the matter in the Scientific and Technical Subcommittee. However, his delegation believed that the item should be retained on the agenda of the Legal Subcommittee and the relevant working group reconvened as and when necessary.

8. While welcoming the fact that the 1992 Principles Relevant to Nuclear Power Sources in Outer Space had been applied by the States concerned, although not included in a legally binding instrument, his delegation saw merit in the view recorded in paragraph 7 of annex I to the Subcommittee's last report

(A/AC.105/573) that it might be useful to provide a legal framework similar to that existing in other branches of law for the use of nuclear power sources in outer space.

9. On agenda item 4, concerning the delimitation of outer space and the geostationary orbit, since the discussions on the definition and delimitation of outer space had been at a standstill for some time his delegation did not think it useful to reiterate its position, although it still believed the problem to be important. It did, however, welcome the draft questionnaire concerning aerospace objects (see document A/AC.105/C.2/1995/CRP.3/Rev.2) and the fact that the draft questionnaire had been brought to the attention of ICAO. In his delegation's view, the Working Group should concentrate on the legal aspects of the problem and request assistance on technical aspects from the Scientific and Technical Subcommittee. Parallel consideration of the matter in both Subcommittees might be helpful.

10. On the second part of agenda item 4, relating to the geostationary orbit, two essential considerations should be borne in mind, namely the need to allow equitable access to the geostationary orbit and allocation of radio-frequency spectrum resources and the need to ensure efficiency of spectrum use. In order to put those considerations into effect, ITU, as had been explained by its representative, had developed arrangements under which a certain amount of frequency spectrum was set aside for future use by all countries, particularly those not yet in a position to make use of such resources. Improvements were expected to be made by World Radiocommunication Conferences to be held in 1995 and 1997. Since the aims of the working paper submitted by Colombia (see document A/AC.105/573, annex IV, section A) seemed to be similar to those already met by the ITU mechanisms, he would appreciate an explanation by the sponsoring delegation as to the differences.

11. With respect to agenda item 5, on outer space benefits, he welcomed the constructive efforts of the sponsors of document A/AC.105/C.2/L.182/Rev.2, which he hoped would help reconcile the interests of the developing countries and those of the States involved in advanced space technology. The working paper submitted by France and the Federal Republic of Germany (A/AC.105/C.2/L.197) might also be useful.

12. Under General Assembly resolution 49/34, extensive, open-ended informal consultations were to be conducted on the working methods and agenda of the Subcommittee, including the consideration of possible additional items for inclusion on the agenda. His delegation considered that the second element of those terms of reference deserved particular attention and was prepared to take part in such informal consultations.

13. **Mr. MAZILU** (Romania) said that his delegation considered that the Principles Relevant to the Use of Nuclear Power Sources in Outer Space should be strengthened through efforts by the Scientific and Technical Subcommittee to create a better framework for the use of nuclear power sources and by the Legal Subcommittee to develop appropriate legal provisions.

14. In his delegation's view, States with relevant space capabilities had a duty to foster international cooperation in outer space science and technology and their applications. Governments engaged in space activities should also be called upon to share with other States, in particular with developing countries, the scientific and technological knowledge required for developing a programme oriented to a more rational exploration and utilization of outer space with a view to preserving the outer space environment for future generations.

15. The role of the activities of the United Nations in strengthening and extending international cooperation in exploring and utilizing outer space should be recognized.

16. He reaffirmed his delegation's view that the geostationary orbit was a limited natural resource and that access to it should be free to all countries, including those which did not yet have the capacity to launch satellites. The interests of such countries should be safeguarded by ensuring that legal principles took into account their possible future technological development.

17. His country believed that free access to space-related information, the transfer of technology and the dissemination of advantages resulting from space could effectively help the less developed countries and contribute to overcoming existing differences in the world. International legal standards should be formulated in that area, supporting United Nations regional mechanisms.

18. Consensus was the basis on which the Committee and its Subcommittees could work in a democratic way to guarantee the peaceful use of outer space.

19. His delegation was prepared to make an active contribution to formulating rules and regulations regarding space and orbital debris.

20. **Mr. VESHCHUNOV** (International Organization of Space Communications (INTERSPUTNIK)) said that INTERSPUTNIK was an independent international intergovernmental organization established in 1971 which operated global satellite communications on a commercial basis. Despite many political and constitutional changes in its member States, INTERSPUTNIK had preserved and strengthened its position.

21. The organization had full international legal personality and the right to conclude agreements with other subjects of international law. It had concluded a protocol on the use of Russian communication satellites and cooperation agreements with ITU and other organizations.

22. Following the pattern set by the International Telecommunications Satellite Organization (INTELSAT) and the International Maritime Satellite Organization (INMARSAT), INTERSPUTNIK had recently decided to amend various articles of the 1971 Basic Agreement to reflect the provisions of the Operating Agreement that was shortly to come into force. Each contracting party would sign the Operating Agreement or designate a telecommunication entity to do so.

23. The revised Basic Agreement would establish a four-organ structure consisting of the Board, the Operations Committee, the Directorate and the Auditing Commission. The Board, composed of one representative of each member of the organization, with one vote regardless of that member's share in the organization's capital, would be the main governing body, deciding on matters of crucial importance to the organization's overall work, while the Operations Committee would be the decision-making body for its day-to-day activities. It would consist of 17 members of the organization, or member groups, 13 being those having the largest capital shares and 4 being elected by the Board irrespective of their shares. Voting in the Committee would be weighted according to capital share. The Committee would seek to take its decisions by consensus. The Directorate was the standing executive and administrative body, headed by the Director-General. He and his deputy would be elected by the Operations Committee and their appointments would be approved by the Board. The Directorate would be responsible for implementing decisions taken by the Board and the Committee. The organization's financial activities would be supervised by the three-member Auditing Commission and by a recognized external auditor.

24. The 22 members of INTERSPUTNIK as of March 1995 were: Afghanistan, Belarus, Bulgaria, Cuba, Czech Republic, Democratic People's Republic of Korea, Georgia, Germany, Hungary, Kazakhstan,

Kyrgyzstan, Lao People's Democratic Republic, Mongolia, Nicaragua, Poland, Romania, Russian Federation, Syrian Arab Republic, Tajikistan, Turkmenistan, Viet Nam and Yemen. Armenia, Canada, India, Israel and Uzbekistan were considering membership. The Russian Federation had assumed all the rights and liabilities of the former Soviet Union in regard to membership of the organization and depositary functions.

25. The main task of INTERSPUTNIK was to assist the former Soviet republics in establishing direct international links with foreign partners. Its areas of assistance included space segment capacity, the coordination of Earth station construction and the establishment of connections. As of March 1995 the INTERSPUTNIK system was used by more than 100 countries or companies, including administrations and companies in Canada, China, France, India, Madagascar, Portugal, the United Kingdom, the United States of America and other countries. The Organization had always provided its services to users without discrimination or restriction and would continue to do so. Its tariff policy was in keeping with the level of world prices. To perform its tasks, INTERSPUTNIK made use of the statutory capital contributed by its members. Its basic revenue consisted of payments for the use of space segment capacity. The profit remaining after the defrayal of maintenance expenditure and special fund replenishment was distributed to members, there being a guaranteed profit share equal to 14 per cent of the amount of capital for the year in question. In conclusion, he said that the revised Basic Agreement and the new Operating Agreement would provide a suitable legal basis for INTERSPUTNIK to engage in market-oriented activities in a new global environment.

MATTERS RELATING TO THE DEFINITION AND DELIMITATION OF OUTER SPACE AND TO THE CHARACTER AND UTILIZATION OF THE GEOSTATIONARY ORBIT, INCLUDING CONSIDERATION OF WAYS AND MEANS TO ENSURE THE RATIONAL AND EQUITABLE USE OF THE GEOSTATIONARY ORBIT WITHOUT PREJUDICE TO THE ROLE OF THE INTERNATIONAL TELECOMMUNICATION UNION (*continued*) (A/AC.105/573 and A/AC.105/605; A/49/20; A/AC.105/C.2/1995/CRP.3/Rev.2)

26. **Mr. ARIZAGA** (Ecuador) said that delegations should endeavour to put forward constructive and innovative proposals on the question of the geostationary orbit with a view to reconciling the widely divergent views which had prevailed so far. Cooperation had replaced competition in space science and technology and its benefits should be extended to the legal sphere as well. His delegation did not agree with the view that the Subcommittee should no longer deal with matters concerning the geostationary orbit. It had before it not only a mandate from the General Assembly to proceed with the item, but also two pertinent documents to which participants had contributions to make. The Russian and Colombian working papers on aerospace objects and the geostationary satellite orbit respectively (A/AC.105/C.2/L.189 and A/AC.105/C.2/L.192) had enriched the debate on the issue. Far from countries' positions on the subject having remained totally unchanged in recent years, there were countries which had shifted their stance in the light of new circumstances, with the aim of achieving general agreement.

27. He associated himself with those delegations from both developed and developing countries which had expressed concern about the growing amount of debris in space, and especially in the geostationary orbit. The orbit was a limited natural resource threatened by saturation with space objects and debris, with consequent hazards for space navigation, telecommunications and countries themselves. His delegation endorsed the idea that the Subcommittee should consider space debris from the legal aspect, especially with reference to the transfer of satellites from the geostationary orbit to a parking orbit shortly before the end of their working life.

28. Since the geostationary orbit had political and legal implications which lay outside the competence of ITU it should be examined by the Committee and its subsidiary organs, especially the Legal Subcommittee. In view of the importance of the orbit for telecommunications, it should not be regulated solely by technical arrangements. There should be a *sui generis* legal regime for access to and use of the geostationary orbit that took account of its particular technical characteristics and the special relationship between it and the equatorial countries. All countries should have equitable access to the geostationary orbit, but bearing in mind the interests of the developing countries, including the equatorial nations, there should be preferential access to the orbit for those countries and an end to their present inequitable treatment. The orbit should be utilized solely for peaceful purposes and for the benefit of mankind as a whole; in that connection provision should be made for the future needs of the developing countries, including those over which the orbit passed. The Colombian working paper offered a good basis for the Subcommittee's consideration of the item.

29. The delimitation of airspace and outer space was not an academic question but one of real significance. It was important to know clearly what regime applied to each. In conclusion, he hoped that the Subcommittee would approve the revised draft questionnaire on space objects (A/AC.105/C.2/1995/CRP.3/Rev.2) and that the questionnaire would be transmitted to Member States and competent international organizations with a view to obtaining additional information on the subject.

30. **Mr. SCHROGL** (Germany) said that his delegation could only repeat its view that the delimitation of outer space was a theoretical question and did not call for regulation by the Subcommittee at present.

31. As far as the utilization of the geostationary orbit was concerned, the possibility for every State to have access to it was of the greatest interest for all developing and industrialized countries. What, it had to be asked, could the Legal Subcommittee do in that respect in addition to the steps which ITU had taken already? ITU had tackled the problem of equitable access to the geostationary orbit by incorporating the notion that the orbit was a limited natural resource into its Constitution and by providing in the Radio Regulations that all States had access to at least one orbital position for the direct broadcasting satellite service and the fixed satellite service. In the view of his delegation, that meant that equitable access to the orbit already existed.

32. It had been suggested that the Subcommittee should ask the representative of ITU to report on any shortcomings in the regulations guaranteeing equitable access. He himself knew of no case in recent years in which access to the geostationary orbit had been denied. Should any countries be affected in that way, it was for them to bring the matter before the Subcommittee, which could then decide whether it needed to do further work on the subject. Under the ITU arrangements access to the orbit was available to all countries, whether developing or industrialized, and that made it unnecessary to think in terms of preferential rights for a particular group of States. The Subcommittee might be surprised to know that Germany had been a latecomer to the geostationary orbit: it had not launched its first telecommunications satellite until more than 10 years after that of Indonesia. He regarded that as an example of the effectiveness of ITU's regulations.

33. **Mr. TELLES RIBEIRO** (Brazil) said that, with regard to the definition and delimitation of outer space, the questionnaire on space objects should be transmitted to all member States and relevant international organizations, in the hope that the replies to the questionnaire would enable the Subcommittee to make significant progress on the issue at its thirty-fifth session.

34. He believed that the discussion at the present session had done much to clarify the position of delegations on the question of the geostationary orbit. The Subcommittee should continue to address the issue on the basis of the Colombian working paper (A/AC.105/C.2/L.192) with a view to exploring whatever

common ground might exist on that complex subject. It should investigate the possibility of considering the question of space debris in that connection.

CONSIDERATION OF THE LEGAL ASPECTS RELATED TO THE APPLICATION OF THE PRINCIPLE THAT THE EXPLORATION AND UTILIZATION OF OUTER SPACE SHOULD BE CARRIED OUT FOR THE BENEFIT AND IN THE INTERESTS OF ALL STATES, TAKING INTO PARTICULAR ACCOUNT THE NEEDS OF DEVELOPING COUNTRIES (A/AC.105/573; A/AC.105/C.2/L.182/Rev.2, A/AC.105/C.2/L.197; A/49/20)

35. **The CHAIRMAN** drew attention to the report of the Subcommittee on its thirty-third session (A/AC.105/573). The report of the Chairman of the Working Group on the agenda item formed annex III to that report. The working paper on the subject submitted by a number of delegations at the thirty-second session was contained in section B of annex IV to the Subcommittee's report. A revised version of the paper was before the Subcommittee as document A/AC.105/C.2/L.182/Rev.2, together with a new working paper submitted by France and Germany (A/AC.105/C.2/L.197).

36. The work of the Legal Subcommittee on outer space benefits had been reviewed by the Committee on the Peaceful Uses of Outer Space at its last session (see document A/49/20, paras. 123-133 and 166(c)).

37. The General Assembly, in resolution 49/34, had recommended that at its present session the Subcommittee, taking into account the concerns of all countries, particularly those of developing countries, should continue its consideration of the item through the relevant working group.

The meeting rose at 11.30 a.m.